THE SPANISH LAND GRANTS OF UPPER LOUISIANA[1]

From the beginning of the American government Congress has been compelled to deal with at least five distinct groups of foreign land claims, beginning with those in the Old Northwest and followed by those in the Territory South of the Ohio, the Louisiana Purchase, Florida, and the territory acquired from Mexico.[2] In the thirty-four years of Spanish domination in Louisiana thousands of land grants were made, and migration and settlement were stimulated. With the purchase of the territory in 1803 the United States fell heir to the confusion of the Spanish grants — a condition which required more than a half century of legislation and administration and a vast amount of litigation.

THE SPANISH LAND POLICY

The "Recopilacion de las Leyes de los Reynos de las Indias" seems to be among the first documents relating to the royal trans-Atlantic domain of Spain. This set of ordinances issued by King Carlos II on May 18, 1682, contains elaborate provisions relating to the disposal of the public domain.[3] By the royal regulation of 1754 the whole power of originating and confirming grants was transferred to the officers of the colonies.[4] Another ordinance issued in about

[1] Under the Spanish government the boundary between Upper and Lower Louisiana was the east and west line running through Hope Encampment, nearly opposite the Chickasaw Bluffs.— Stoddard's *Sketches of Louisiana,* p. 205.

[2] Treat's *The National Land System, 1785–1820,* pp. 200, 201.

[3] *American State Papers, Public Lands,* Vol. V, pp. 536–638.

[4] *American State Papers, Public Lands,* Vol. V, pp. 655–657.

1768 by King Carlos III made the intendants the exclusive judges of the causes and questions that might arise "in the district of their provinces about the sale, composition, and grant of royal lands."

Not until August 18, 1769, did Spain under the iron hand of Governor Don Alexander O'Reilly assume possession of the province of Louisiana. Governor O'Reilly was diligent in investigating the need of special regulations concerning the public lands: a considerable number of forts were visited, the inhabitants were convened, and complaints and petitions were invited from the settlers relating to such subjects as surveys, grants, concessions, the extent of grants, mineral sites, salt springs, roads, and village pastures.[5]

Returning to New Orleans the Governor on February 18, 1770, published twelve regulations which may be said to be the first which exhibit the general intention and policy of Spain in relation to the disposition of the public domain in Louisiana. These regulations received the approval of King Carlos III on February 24, 1770.[6]

All grants were to be made in the name of the king by the governor-general of the province who was required to appoint a surveyor to fix the bounds of the grant in the presence of three other witnesses. These four persons were then to sign the survey, make three copies thereof, deposit one copy with the government, another with the governor-general, and the third with the grantee to be annexed to the titles of his grant.

To each newly arrived family was to be granted on the Mississippi a tract six or eight arpents in front by forty arpents in depth. This would give them the benefit of the

[5] Gayarré's *History of Louisiana*, Vol. III, pp. 32, 33.

[6] *American State Papers, Public Lands*, Vol. V, pp. 729, 730; *American State Papers, Miscellaneous*, Vol. I, pp. 376, 377.

cypress woods. The grantees were required to construct, within three years, ditches to drain the land and embankments to keep out the water. Roads had to be constructed and a certain amount cleared of timber. No tract could be sold or alienated until these conditions had been fulfilled and even then only upon the written permission of the governor-general. Cattle were to be allowed to run at large from November 11 to March 15 and after July 1, 1771, it was to be lawful for anyone to hunt and kill the strayed cattle as game.

Grave doubt has been expressed as to whether the land ordinances of Governor O'Reilly ever operated in Upper Louisiana. "These laws", declared Stoddard, "were never considered in any other light than as *general rules,* liable to exceptions when cases occurred to justify them. . . . Some of the commandants were stationed from three hundred to one thousand miles from the capital, and could not speedily communicate with the great officers of the crown."[7] It was further urged that the successors of O'Reilly were no more bound by his regulations than is one legislature by its successor.

Later, however, the Supreme Court of the United States declared that O'Reilly's regulations were intended for the general government of subordinate officers and not to control and limit the power of the person from whom they emanated. His successors, it was held, had become possessed with all the powers which had been vested in Governor O'Reilly and a concession granted by them was as valid as any granted by O'Reilly.[8] And in 1836 an attorney for the United States declared:—

[7] Stoddard's *Sketches of Louisiana,* pp. 249, 250. The author of this rather rare volume published in 1812 was Captain Amos Stoddard who took formal possession of Upper Louisiana on March 10, 1804. The volume contains seventeen chapters by an intelligent observer which describe the history, the government, the commerce, the religion, and the natural resources of the province.

[8] Delassus *vs.* The United States, 9 Peters 117, 135, (1835).

When we find the regulations of O'Reilly, ... in force in every other portion of Louisiana — when we find them constituting the only rules for making grants of land from the year 1770 until the transfer of the province to the United States — it is quite impossible to believe there was one insulated district within that province governed by different laws, and where those regulations did not prevail.[9]

For the first twenty-five years of the Spanish occupation in Upper Louisiana the land policy of Spain was chaotic and systemless. Tracts of land were frequently occupied and cultivated without any concession. Villages such as St. Louis, New Madrid, and Ste. Genevieve had their common fields in which each inhabitant who desired to do so owned and cultivated his separate lot. The villagers would in some places also be granted a commons which furnished a supply of fuel or in other cases pasturage for the cattle.[10]

Prior to 1770 several grants had already been made by French commandants of the region. In the three years beginning with 1770 sixty-four concessions had been made mostly to the French. These were surveyed by the order of the first commandant and comprised a total of 4800 arpents. Even as late as 1788 not more than 6400 arpents had been actually surveyed in the district of St. Louis. These facts indicate that the land problem had not yet become one of pressing importance in the province.[11]

Concessions were often made but the surveys for them oftener lagged and the actual confirmations were few. Throughout the first twenty-five years of the Spanish occupation it appears that no concessions exceeded a league square and that they were issued upon the condition of

[9] Argument of R. K. Call for the Commissioner of the General Land Office, E. A. Brown.— *American State Papers, Public Lands,* Vol. VIII, pp. 796, 797.

[10] Bird *vs.* Montgomery, 6 Missouri 510, 524, (1840).

[11] Stoddard's *Sketches of Louisiana,* p. 244.

settlement and with a direct view to their cultivation or the raising of cattle.[12]

Surveyors were few and expensive to the scattered settlers; the array of Spanish officials was not conducive to the quick dispatch of the public business, and the trip to New Orleans to secure the perfection of his title was too long, expensive and dangerous for the settler who for years had lived in undisturbed possession of his grant in New Madrid or in Cape Girardeau.[13]

Not until February 1795 was Antonio Soulard appointed as the first Surveyor General for the district of Upper Louisiana.[14] Deputies were appointed in the various districts, fees were regularly collected, and an office was opened for the registration of land titles. This is the beginning of a new era in the Spanish land policy and from this time on the administration of the royal domain is more rigid and systematic.

About this time the stream of migration to Upper Louisiana began to widen and to quicken. To counteract the danger from the English in Canada most liberal inducements were offered to the Americans, whose hostility to the English, it was believed, would bind them to the Spanish. The free and extensive grants, their fertility, and the prospect of mineral wealth soon drew thousands of Americans into the steady current of migration to Missouri.[15] The importance of the land policy in Upper Louisiana increased, of course, as the population of the province swelled.

Twenty-seven years after the formal occupation of Louisiana by the Spanish the Governor, Manual Gayoso de

[12] *American State Papers, Public Lands,* Vol. VIII, p. 797.

[13] Houck's *A History of Missouri,* Vol. II, pp. 219, 220; *American State Papers, Public Lands,* Vol. VIII, p. 21.

[14] Stoddard's *Sketches of Louisiana,* p. 248.

[15] Stoddard's *Sketches of Louisiana,* p. 249.

Lemos, issued (September 9, 1797) a set of supplemental instructions for the distribution of the royal domain.[16] New settlers, not farmers, unmarried, and not possessed of property could not solicit grants of land until after four years of actual residence; to artisans land could not be granted until after three years practice of their trade in the province unless the artisan married a farmer's daughter, in which case the grant could be issued after only two years. Such qualified settlers were to receive two hundred arpents of land and fifty additional arpents for every child brought into the province. Each negro slave entitled the settler to twenty arpents additional land, but the total area granted was not to exceed eight hundred arpents.

"No lands shall be granted to traders;" declares Governor Gayoso's eleventh ordinance, "as they live in towns they do not want them." The new settler was required to prove that both his property and his wife were lawful; he was to enter the lands within one year and by the end of the third year have ten arpents under actual cultivation. No land could be sold until he had produced three crops or at least a tenth of his possessions. And no lands could be inherited by a foreigner unless the heir should become a resident of the province.

Neither could debts contracted outside of the province be paid from the product of the grant until after five harvests should have been gathered. In case any settler should be ejected "for bad conduct" the grant was to revert to the king of Spain. And finally, it was required that grants be made so as not to leave vacant areas between grants. This was to insure less exposure to Indian dangers as well as to facilitate the administration of justice and police regulations.

These ordinances were followed by a set of long and

[16] *American State Papers, Public Lands,* Vol. V, pp. 730, 731.

detailed regulations and instructions for conceding lands as issued on July 17, 1799,[17] by Don Juan Ventura Morales, the Intendant at New Orleans. All concessions were to be given in the name of the king by the general Intendant of the province who was to order the survey for laying out the tract. Not until the title should be delivered should the act of transfer be considered complete. Squatters were required to give up their claim or show cause within six months for holding their estate. The clause relating to the forfeiture of lands not improved within three years in the case of any sales was repealed.

The fees for the surveyor were to be proportioned to the labor involved in the survey and to the financial ability of the owner of the grant; a record was to be kept of all grants in the financial office of the province; special regulations were enacted in the case of minors who held grants; the Indians were not to be disturbed but supported and protected; and as far as possible the Spanish language was to be used in describing concessions, surveys, and transfers.

"These land laws", declared a later observer, "were exclaimed against as extortionate and oppressive; extortionate, because they made it necessary for a concession to pass through four, and in some instances, seven offices, before a complete title could be procured, in which the fees exacted, in consequence of the studied ambiguity of the thirtieth article, frequently amounted to more than the value of the conceded lands; oppressive, not only because the settler was deprived of his original papers, but because the twenty second article declared all concessions void, unless forwarded for confirmation within six months after the publication of laws at the several posts. This was tantamount to a reunion of all the lands of settlers to the domain. Not one in fifty was able to transmit the evidences of his claim,

17 *American State Papers, Public Lands,* Vol. V, pp. 731–734.

and to defray the expenses of his title, within so short a period as six months. Besides, these laws reserved to the government the privileges of taxation, and nothing could render them more unpopular."[18]

During this period the procedure for securing grants was rather simple, though too often the grantees were too careless to take all the steps necessary to secure a perfect title. Documentary evidence shows that those officers in charge of the civil and military branches of the government, such as commandants, lieutenant governors, intendants, surveyors, and others exercising sub-delegate powers, constituted the machinery for disposing of the royal domain in Upper Louisiana.[19]

Successive steps were the petition[20] of the settler, the recommendation by some commandant,[21] and the formal

[18] Stoddard's *Sketches of Louisiana*, pp. 252, 253.

[19] *American State Papers, Public Lands*, Vol. VIII, p. 21.

[20] The following represents an ordinary form of petition:

"DON CARLOS DEHAULT DELASSUS, *Lieutenant Governor of Upper Louisiana, &c.:*

"SIR: Alexis Maurice, residing in this Upper Louisiana since several years, has the honor to represent to you that he would wish to establish himself therein: therefore he has recourse to the goodness of this government, praying that you would be pleased to grant him a tract of land of four hundred arpens in superficie, to be taken on the vacant lands of his Majesty, in the place which will appear more suitable to the interest of your petitioner, who presumes to expect this favor of your justice.

his

"ST. GENEVIEVE, *May* 5, 1800." ALEXIS X MAURICE"

mark

[21] The commandant's recommendation upon this petition follows:

"We, the undersigned, captain, civil and military commandant of the post and district of New Bourbon of Illinois, do certify to Don Carlos Dehault Delassus, lieutenant governor of Upper Louisiana, that Mr. Alexis Maurice, who has presented the foregoing petition, is a very good man, an excellent mechanic and farmer, and worthy, under all points of view, to obtain from the government the concession of 400 arpens of land he asks for, in a vacant lot of the King's domain, and that he is able, with his means and cattle, to improve the same.

"Done in New Bourbon, 12th May, 1800.

PRE. DELASSUS DE LUZIERE"

grant and order of survey,[22] which was, seemingly in the majority of cases, not followed up by the formal task of survey. To illustrate: André Chevalier from New Bourbon (on October 1, 1799) petitioned for a grant of 400 arpents, desiring "to make and improve a plantation" and "being the son of one of the most ancient inhabitants". This application though addressed to the Lieutenant-Governor (Don Carlos Dehault Delassus) was next taken to the commandant at New Bourbon (Pedro Delassus de Luziere). The commandant three days later declared that "the petitioner is worthy to obtain the concession he solicits for, as much on account of the length of time his family has been settled in the upper part of this colony, and their honesty, as also because he has no other profession to support himself but that of a farmer, which he has practiced with advantage since his youth."

Two weeks later the Lieutenant-Governor acting upon this commandant's endorsement granted to Chevalier and his heirs the lands requested, and ordered the surveyor, Don Antonio Soulard, to place the petitioner in possession and deliver to him a plat of the survey. In this case the survey, however, was never made.

Even now the grantee in order to perfect his title ac-

[22] From the Lieutenant-Governor there was next issued the following grant to the petitioner:

"ST. LOUIS OF ILLINOIS, *May* 24, 1800.

"In consequence of the information given by the captain of the post of New Bourbon, Don Pedro Delassus de Luziere, and it appearing to me that the petitioner has more than the means necessary to obtain the concession he solicits, I do grant to him and his heirs the land he solicits, provided it is not prejudicial to any person, and the surveyor Don Antonio Soulard, shall put the party interested in possession of the quantity of land he asks, in a vacant place of the royal domain; and this being executed, he shall make out a plat delivering the same to said party, together with his certificate, in order to serve him to obtain the concession and title in form from the intendant general, to whom alone belongs the distributing and granting all classes of lands of the royal domain. CARLOS DEHAULT DELASSUS"

cording to the laws of the province would be required to journey to New Orleans where the Governor-General was to give the final sanction and form. This, however, was rarely done: money was scarce among the settlers; the great distance from Upper Louisiana to New Orleans and the expense of the journey were barriers; and finally Spain was indulgent to the ancient inhabitants of its province. Indeed, "the confidence and security which the ancient inhabitants of Upper Louisiana had in those incomplete titles, is strongly evidenced by the fact of so few being perfected, even among those who had been in possession under their grants from twenty to forty years previous to the change of government."[23]

"During the Spanish domination", says Houck, "there was an uninterrupted exercise of the power to grant lands by Lieutenant-Governors and sub-delegates, which was never challenged, disputed, or questioned during that period."[24] The public domain attracted Americans, vast numbers of whom joined the westward current of migration which soon overflowed into Upper Louisiana. Daniel Boone, forsaking the throngs of population in Kentucky secured (July 11, 1800) a claim of 1000 arpents upon the Femme Osage,[25] and represents a type of the American immigrants to Upper Louisiana.

Immense areas were granted by the Spanish for various purposes. Israel Dodge, lately from Kentucky, who had erected "establishments so useful to the public, such as mills, distilleries, and breweries", was granted a domain of 7056 arpents;[26] James Mackay was granted 30,000 arpents; great blocks of land were given as rewards for civil and

[23] *American State Papers, Public Lands,* Vol. VIII, p. 21.
[24] Houck's *A History of Missouri,* Vol. II, p. 217.
[25] *American State Papers, Public Lands,* Vol. II, p. 396.
[26] *American State Papers, Public Lands,* Vol. VIII, p. 49.

military services, for agricultural and stock-raising purposes, for the objects of exploiting timber, mineral wealth, or other natural resources.[27]

Concessions were either general or special in nature. In the case of the former the grantees were permitted to locate anywhere on the vacant lands of the public domain. This gave rise to the term "floating or running title". In the case of the special grants a definite locality or area with certain limits was designated. The former appears to have been the more common form of grant as it enabled the settler to select sites which were convenient and valuable.[28]

Distinct contrasts are yielded by placing the Spanish land policy alongside that of the early history of the United States. Indian land titles were more respected by Spain whose land hunger did not have a consuming effect upon the Indian possessions. The Indian trader was granted no lands and received scant encouragement from the authorities of Spain. Although grants were sometimes of immense extent the records do not show the existence of great land companies such as the Ohio Company at Marietta. Spanish settlements were individual rather than collective; speculation was discouraged both by law and in practice. It would seem, however, that if the policy of the United States re-

[27] "St. Vrain, a brother of [Lieutenant-Governor] Delassus, was granted 10,000 arpens on a petition in which he says that he desired 'to secure to himself a competency which may in the future afford him an honorable existence,' and in 1799 secured an additional grant upon which to 'collect his family and keep it near him.' Richard Caulk, one of the early American settlers west of the Mississippi, was awarded 4,000 arpens 'in consideration of all his gratuitous services, that were often painful and onerous' to him, as commandant of the settlement of St. Andre, in the absence of the commandant Don Santiago Mackay. François Saucier, a descendant of one of the earliest pioneers of the Mississippi Valley, and founder of Portage des Sioux, received a grant of 600 arpens for each of his children,— thirteen in number — and 1,000 arpens for himself and wife, to reward him for his 'laborious task' as Commandant of Portage des Sioux, a position he filled, he says, 'without remuneration'."— Houck's *A History of Missouri,* Vol. II, 226, 227.

[28] Stoddard's *Sketches of Louisiana,* pp. 245, 246.

garding location, surveys, and plats were to be described as systematic, that of Spain may be designated as chaotic.[29]

Unusual inducements were held out by Spain to settlers of all kinds. To secure their permanent location upon the soil, its cultivation, and the erection of mills, distilleries, and other permanent establishments were the purposes which prompted Spain to dispose of its royal domain in Upper Louisiana with a lavish hand.

Unlike the policy of the United States the lands were not looked upon by Spain as a source of revenue. "The liberality of the Spanish government in donating land to actual settlers", declares Houck, "stands in striking contrast with the illiberal policy of the United States at that period. The pioneer settling in the Spanish Dominions in upper Louisiana was not expected to pay for land on which he established a home. The hardship, the danger, the isolation from all the comforts of civilization seem to have been fully appreciated by the Spanish government. It was thought unjust, that in addition to opening a path in the wilderness and with untold perils and self sacrifice laying the foundation of civilized order, the settlers should also pay the government for the land so settled, or should even pay taxes on the same."[30]

Such a liberal policy undoubtedly accelerated migration

[29] "When Louisiana was transferred to the United States, very few titles to lands, in the upper part of that province especially, were complete. The practice seems to have prevailed for the deputy governor, sometimes the commandants of posts, to place individuals in possession of small tracts, and to protect that possession without further proceeding. Any intrusion on this possession produced a complaint to the immediate supervising officer of the district or post, who inquired into it, and adjusted the dispute. The people seem to have remained contented with this condition. The colonial government, for some time previous to the cession, appears to have been without funds, and to have been in the habit of remunerating services with land instead of money. Many of these concessions remained incomplete."—Soulard et al. *vs.* The United States, 4 Peters 511, 512 (1830).

[30] Quoted from Houck's *A History of Missouri*, Vol. II, p. 224.

to Louisiana and contributed to the Americanization of the province. These factors in turn helped to crystallize those conditions which secured the complete American sway over the Louisiana Purchase and thus inaugurated the policy of trans-Mississippi expansion.

THE ASCERTAINMENT AND ADJUSTMENT OF SPANISH LAND CLAIMS IN UPPER LOUISIANA 1804–1812[31]

A mass of unsettled land claims is one of the principal memorials to the United States of the thirty-four years of Spanish occupation of Upper Louisiana. Out of the unsettled conditions of titles petitions flowed to Congress, scores of Congressional acts were passed, boards of land commissioners made investigations and reports; while later both the Supreme Court of Missouri and that of the United States adjudicated large and extensive claims which dated back to the rule of Delassus, Trudeau, Soulard, and Carondelet.

Population had grown steadily in Upper Louisiana under the Spanish régime from about 1591 in 1785[32] to about 2093 in 1788,[33] to 6028 in 1799,[34] and to perhaps 11,000 in 1804.[35] Even before the actual transfer of Louisiana to the United States land values had risen high. "In fine," declared an observer, "the cession raised the general mass of property in Louisiana more than four hundred *per centum.*"[36] Great efforts were made to have all grants located and surveyed, and surveyors were everywhere in great demand.

[31] The District of Louisiana was created by the Congressional act of March 26, 1804, and comprised that part of the Louisiana Purchase north of parallel 33 degrees.

[32] Martin's *History of Louisiana,* p. 240; *American State Papers, Miscellaneous,* Vol. I, p. 391.

[33] Martin's *History of Louisiana,* p. 251.

[34] Gayarré's *History of Louisiana,* Vol. III, p. 406.

[35] Stoddard's *Sketches of Louisiana,* p. 226.

[36] Stoddard's *Sketches of Louisiana,* p. 266.

Rumors of fraud and speculation became current before the actual transfer of the province to the United States, and charges of enlarging grants, of making illegal surveys, of antedating grants, and the conniving of Spanish officials with American speculators reached the government. "You have no guess how the United States are imposed on by the Spanish officers, since they have heard of the cession of Louisiana:" reads one warning. "Grants are daily making for large tracts of land and dated back; some made to men who have been dead fifteen or twenty years, and transferred down to the present holders. These grants are made to Americans, with a reserve of interest to the officer who makes them; within fifteen days the following places have been granted, to wit: forty-five acres choice of the lead mines, sixty miles from this, heretofore reserved to the Crown of Spain; the iron mine on Wine creek, with ten thousand acres around it, about eighty miles from this place, and formerly reserved by the Crown of Spain; sixty thousand acres, the common touching St. Louis, heretofore given by the Crown of Spain to the inhabitants of the village; the tin mines, (though of doubtful value) and fifteen thousand acres adjoining; and many other grants of ten, fifteen, twenty, and thirty thousand acres have been made. I could name persons as well as places."[37]

Although the Louisiana treaty provided that the inhabitants should "be maintained and protected in the free enjoyment of their liberty, [and] property",[38] it became apparent at once that legislation was imperative to save the public domain from spoliation. Indeed, the first Congressional act (March 26, 1804)[39] respecting Louisiana

[37] From an anonymous letter to Albert Gallatin, dated Indiana Territory, Kaskaskias, October 18, 1803.— Printed in the *American State Papers, Public Lands,* Vol. I, p. 189.

[38] Article 3 of the treaty of cession.

[39] Shambaugh's *Documentary History of Iowa,* Vol. I, pp. 19–23.

contained several distinct clauses intended to cover the conflicting Spanish titles: no grants were to exceed a mile square, and those, the title to which reposed in the Crown of Spain at the time of the treaty of cession (April 30, 1803), were declared void. An exception was made in the case of those grants upon which a bona fide settlement according to the laws and usages of Spain had been made prior to December 20, 1803.[40]

The next Congressional act, approved on March 2, 1805,[41] provided for the confirmation of grants settled on or before October 1, 1800, in the case of settlers who at the time the grant emanated were twenty-one years of age and at the head of a family. Then, too, grants made prior to December 20, 1803, which were followed by actual cultivation and settlement were to be confirmed. But in no case were the areas to be over one square mile.

Another section of the act provided for the appointment of three commissioners who were empowered to examine the titles of all persons claiming lands under French and Spanish grants. Power was given them to administer oaths, examine witnesses, and to secure any and all evidences of claims to public lands. Their findings were to be reported to Congress for final determination by that body. No grant, however, made subsequent to October 1, 1800, was to be recognized, and all claims not presented to the Commissioners before March 1, 1806, were to be barred from consideration.

Objections to this law came from the Territory of Or-

[40] In the drafting of Congressional legislation upon the subject of the Spanish grants several dates are of prime importance and significance. These are (1) October 1, 1800, the date of the treaty of San Ildefonso whereby Louisiana was receded by Spain to France; (2) April 30, 1803, the date of the Louisiana Purchase Treaty; (3) December 20, 1803, the day on which the United States took formal possession of Louisiana at New Orleans.

[41] *Annals of Congress*, 2nd Session, 8th Congress (1804–1805), Appendix, pp. 1677–1682.

leans on November 14, 1805, and can apply almost equally well in the case of Upper Louisiana. The age requirement of twenty-one years was unjust. "Aged invalids are now the proprietors of tracts held under warrants granted to minors; and numerous families, at this moment, subsist upon the production of lands formerly granted to those who were then unmarried, and without families. Indeed, infancy, celibacy, or the want of a family, were never thought of as an objection to the emanation of patents under the French or Spanish governments."[42]

Injustice was also seen in the requirement of residence and cultivation prior to October 1, 1800: the Spanish government never resumed their grants on account of the non-performance of conditions, unless the party claiming had evinced some disposition to abandon the land, or to emigrate from the province. Then, too, in many instances where lands had long been settled, and conditions religiously fulfilled, the proprietor had settled upon some other tract acquired by purchase or by the bounty of the Spanish government. To refuse to confirm the first grant because of non-residence or non-cultivation, urged the petition, would be unjust.

President Jefferson now appointed the Board of Commissioners — John B. C. Lucas, James L. Donaldson, and Clement B. Penrose — who repaired to St. Louis where they began the tedious labor of summoning witnesses, collecting evidence, taking testimony, and examining plats and surveys.[43] To lessen the chances of impositions and *ex parte* depositions it was required at the beginning that testimony should be delivered *viva voce* before the board.

Improvement of the law of 1805 was attempted in the

[42] From the remonstrance of the House of Representatives of the Territory of Orleans to the House and Senate of the United States.— Printed in the *American State Papers, Public Lands,* Vol. I, pp. 250, 251.

[43] Houck's *A History of Missouri,* Vol. III, Chapter II, *passim.*

Congressional acts of February and April of the next year.[44] Claims could be filed after March 1, 1806, by parties where the tracts had not been surveyed by Spanish officials prior to December 20, 1803. Claims originating with minors were henceforth to be allowed, provided the grants had been held and cultivated for ten consecutive years prior to December 20, 1803. Confirmation was made also where the following conditions had been met: commencement of settlement prior to October 1, 1800, followed by inhabitation and cultivation for three years prior to December 20, 1803. Such conditions were to be considered as permission from Spain to settle even though the express permission could not be proved.

Three changes were made by the Congressional act of March 3, 1807:[45] the age requirement of twenty-one years was repealed; the titles to tracts of which the claimant had been in possession for ten consecutive years prior to December 20, 1803, were confirmed; and the time for filing claims was extended to July 1, 1808, and the Board of Commissioners was given full power to adjust the claims of persons who had been actual residents of Louisiana on December 20, 1803, except in the case of tracts exceeding a league square or containing salt or mineral springs.

A difficult task was before the Board of Commissioners as they continued their sessions at Ste. Genevieve, Cape Girardeau, and New Madrid. Feuds, lawlessness, contentions, and a greed for land prevailed in the region. Dissatisfaction arose and complaints upon the work of the commission flowed to Washington. Not a little difficulty was experienced in the attempt to collect and to reconcile the various land laws promulgated by Spain.[46]

[44] *United States Statutes at Large*, Vol. II, pp. 352, 353, 391.

[45] *Annals of Congress*, 2nd Session, 9th Congress (1806–1807), pp. 1283–1286.

[46] Houck's *A History of Missouri*, Vol. III, pp. 48, 49.

Fraudulent grants and ante-dated concessions in large numbers demanded the attention of the Board and it was upon the largest grants, of course, that the greatest cupidity of the speculators fell. Says Stoddard in describing the frauds in Upper Louisiana:

> Twenty six concessions exist, derived from the last lieutenant governor, each of which embraces a league square, or more, of land. Thirteen of them bear date in 1799, nine in 1800, two in 1801, one in 1802, and one in 1803. They comprise two hundred and seventy one thousand seven hundred and fifty two arpents. Of this quantity, one hundred and twenty one thousand four hundred and forty eight arpents, contained in twelve concessions, were regularly surveyed. The remainder, one hundred and fifty thousand three hundred and four arpents contained in fourteen concessions, were in the hands of the several claimants at the time the United States took possession of the country. Such a number of extensive concessions, mostly bearing date in 1799 and 1800, when a few only of this description are to be found of prior or subsequent dates, certainly furnishes good ground to suspect their legitimacy.[47]

News of the cession of Louisiana to France had increased the cunning of Spanish officials and the speculators. "Instructions were given to the various agents by the Governor, as well as to the several deputy surveyors, that grants and concessions be dated back to the year 1799, which was the general antedate, though some were dated further back, and that surveys thereof would be made of any tract from fifty to fifty thousand acres to any person who would apply, upon payment of one hundred dollars for five hundred acres, and so great was the thirst of speculation, when money could not be obtained, horses and other property was [*sic*] received in payment. . . . They proclaimed that their records were kept in such form that it would be utterly impossible for the United States to detect the fraud."[48]

[47] Stoddard's *Sketches of Louisiana*, p. 256.

[48] Letter in Houck's *A History of Missouri*, Vol. III, pp. 36, 37.

The methods of keeping the land records — so-called — are described by the same official as follows:

When a person applied for lands it was customary for the commandant of the district to give a written permission to settle, which, when sanctioned by the Governor, is called a concession. It has been usual for the Governor to sign his name to these concessions without looking at or reading the petition when presented by the surveyor-general. No record is made of this concession until the survey is actually made out, when the surveyor-general enters in a memorandum book a copy of the plat, day of the order of survey, and the time when the plat of the survey is given out and the papers are delivered to the applicant. This form was a plan adopted by the surveyor-general for his own convenience, but no direction has ever been given by the government requiring any record whatever to be made. These records, of course, are not official; it would appear therefore, that a concession made in 1804, which bears date 1799, when no survey has been made, would be of the same efficiency with those actually made in 1799 unless the fraud can be specially proven.

The report of the Board of Land Commissioners covers the operations of that body for about six years (from December, 1806 to December, 1812) and was communicated to the House of Representatives in April and December of 1812. The region embraced in its work was the Territory of Louisiana (later Missouri Territory) — that part of the Louisiana Purchase which lay north of the parallel 33 degrees, the present southern boundary of the State of Arkansas. The report, finally, consists of three parts: first, a classification of the claims before the Board; second, the minutes of the Board upon claims not granted; and third, a tabulated list of the claims allowed for which certificates were granted.[49]

Forty-nine groups of claims, which indicate the confusion and complexity enveloping the Spanish grants, were sub-

[49] This report is to be found in the *American State Papers, Public Lands*, Vol. II, pp. 377–379; 388–603.

mitted. "It is probable", said Commissioner Penrose "the classification may not embrace all the species of claims but will, I flatter myself, be sufficiently comprehensive to enable the Congress of the United States to pass some general law on the subject, which, I take the liberty to observe, would be of great importance to the *bona fide* claimants".[50]

Condensation of the above number of claims will give five sets — less clearly defined but more usable in describing them in general.[51] First, there were the claims derived from French and Spanish grants, dated prior to October 1, 1800, exceeding eight hundred arpents, but not exceeding one league square, and which have been either inhabited or cultivated prior to December 20, 1803, or which have been granted for the purpose of building mills, or for works of other public utility, where the terms expressed in the grant have been complied with.[52]

A second class were those originating from French and

[50] *American State Papers, Public Lands,* Vol. II, p. 377.

[51] *American State Papers, Public Lands,* Vol. II, p. 378.

[52] The minutes of the Board of Commissioners sitting on a claim of this class read as follows:

"JAMES MACKAY, claiming four thousand four hundred and sixty arpents of land, situate on Wild Horse creek, district of St. Louis; produces to the Board a concession from Zenon Trudeau, Lieutenant Governor, dated December 23d, 1797, conditioned for the building of a mill and establishing a farm; produces a plat of survey, dated 6th March, 1798, and certified 23d December, 1798.

"Testimony taken, October 27, 1808. James Calvin, sworn, says the claimant, about eight or nine years ago, built a cabin, and commenced building the dam for a mill on the tract claimed; says there was some cultivation.

"Aaron Calvin, sworn, says that, about eight or nine years ago, there was a crop raised on said land for claimant; and also there were crops raised on said land for claimant the two following years; about seven years ago, there was a field of about ten or eleven acres cleared, and rails cut to fence it; does not know whether it was enclosed or not, as witness left the neighborhood.

"October 2, 1811: Present, Lucas, Penrose, and Bates, commissioners. It is the opinion of a majority of the Board that this claim ought not to be confirmed; Clement B. Penrose, Commissioner, voting for a confirmation. Said majority declare, that if this claim had not exceeded eight hundred arpents, they would have voted for a confirmation."— *American State Papers, Public Lands,* Vol. II, p. 495.

Spanish grants, not exceeding eight hundred arpents in the case of grants for public services, for the construction of mills and distilleries, where the services were proved to have been performed or where the terms on which the grant was made have been complied with.

The third class constituted claims derived as in the former groups, not exceeding eight hundred arpents, where the claimant has had no other tract granted or confirmed, and which are not included in any connected plat or survey, or where further proof of the written evidence has not been required or which have not been declared fraudulent.

Class four constituted those claims which were either inhabited or cultivated prior to, or on the 20th of December, 1803, with or without permission. An illustration of this group may be found in the claim of Robert Spincer to seven hundred and fifty arpents in the district of St. Charles. A plat and a certificate of survey dated September 5, 1805, was filed for record on February 28, 1806. The testimony showed that since 1802 the land had been inhabited and cultivated by the claimant and that in 1803 he had a wife and one child. The opinion of the Board (December 13, 1809) was that the claim should not be granted.

The fifth group comprised nearly one-fourth in number of all the claims in the Territory of Louisiana. It included claims for villages, commons, common fields, and lands adjacent given to the inhabitants for cultivation, possessed prior to December 20, 1803. Such villages established before December 20, 1803, were St. Charles, Portage des Sioux, St. Louis, St. Ferdinand, Marais des Liards, Carondelet, Ste. Genevieve, New Bourbon, New Madrid, Little Prairie, and Arkansas.

"By the spirit of the [Spanish] ordinances," declared Commissioner Penrose,[53] "all these claims would have been

[53] *American State Papers, Public Lands,* Vol. II, p. 378.

granted, although not embraced by the strict letter of those ordinances. The Spanish government to gain a subject, would have given land; and agriculture being their object, everything which would have promoted it would have been done. Rewarding services with land was an easy manner of paying debts, where land was considered of so little value. . . . and as I presume the intention of our Government must be to do such justice to their newly acquired citizens as would have been done by that Government of whom they were purchased, there can be no hesitation in confirming or granting such claims as are comprehended in the five foregoing classes.''

Perhaps two thousand claims were examined by the Board which were not confirmed. The minutes show a large number of French names but very few Spanish, which fact further confirms the statement that during the entire period of Spanish domination the French rather than the Spanish held sway.[54] Such names as Villars, St. Vrain, and Vallé represent the prominent families in the early history of the quaint old French villages along the Mississippi.

American names exceed in number and show that the conquest of Louisiana was noiseless, bloodless, and unrelenting. Peaches and apples grew in the orchards planted by the American settlers; timber lands were cleared; sugar works were set up, and corn, potatoes, and vegetables cultivated. Salt springs were seized upon and the aggressive Americans improved upon the primitive French methods of mining and smelting lead. Mills, breweries, and distilleries were erected. Settlement, labor, property, and permanent homes — such were the successive steps in the Americanization of the province of Upper Louisiana.

Brief as they are, the staid minutes of the Board of Commissioners present interesting aspects of the frontier life

[54] Cf. Isidor Loeb in the *Missouri Historical Review*, Vol. I, pp. 53–71.

of this region. Hardships and dangers were encountered by these westerning Americans, and Indians not infrequently attacked the settlers and destroyed their homes. Considerable numbers of slaves were brought from Kentucky and the eastern States. John Vallet who had sought permission of Delassus to settle swore that the Governor told him "to take his plow and go on with his work, and nobody should disturb him." David Delauney testified that "he was not in the habit of ante dating"; another testified in favor of Francis Soucier who "is father of a family composed of himself, wife, and about fifteen children" and who was deserving of four hundred arpents for his service as commandant. And, in one concession (which later was not confirmed) the Board discovered "several erasures in the material parts of the petition in different colored ink."

Claims of immense extent passed in review before the Board. James Mackay's claim to 30,000 arpents was rejected in 1809; the next year Louis Lorimer's claim to 8000 arpents was disallowed, and in 1811 Julien Dubuque and Auguste Chouteau's title to 148,176 arpents opposite Prairie du Chien was voted to be not confirmed.[55]

Confirmations of titles for which the Commissioners issued certificates number 1342 and range from small lots to estates of 800 arpents. The first certificate issued bore date of December 8, 1808, and was in favor of David Musick for a tract of 400 arpents in the District of St. Louis. The last certificate issued January 15, 1812, went to Louis Brazeau and confirmed a grant of two hundred and seventy arpents also in the District of St. Louis.

The bases of the various claims were concessions, ten years' possession, actual settlement, and orders of survey. The first, of course, furnished the great majority of claims. And without exception the confirmations were confined to what is at present the Commonwealth of Missouri.

[55] *American State Papers, Public Lands,* Vol. II, pp. 394, 414, 451, 452.

Congressional confirmation of the claims allowed by the Board of Commissioners was made by the act of June 13, 1812.[56] "The same shall be confirmed," declares the fourth section, "in case it shall appear that the tract so claimed was inhabited by the claimant or some one for his use prior to the twentieth day of December, one thousand eight hundred and three as aforesaid, and cultivated in eight months thereafter, subject, however, to every other limitation and restriction prescribed by former laws in respect to such claims; and in all cases where it shall appear, by the said report, or other records of the board, that claims to land have not been confirmed merely on the ground that the claim was for a greater quantity than eight hundred arpens, French measure, every such claim, to the extent of eight hundred arpens, shall be confirmed."

Frederick Bates, the Recorder of Land Titles, reported the results of his investigations upon land titles in the Territory of Missouri. The first part[57] deals with the confirmation of village claims as provided for in the act of June 13, 1812. These villages were Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Village á Robert, Carondelet, Ste. Genevieve, New Madrid, New Bourbon, and Little Prairie.[58]

These tracts, varying in area from one arpent to lots of miniature size, were situated in or near the above villages. The claimants, descendants of the early French families, offered as bases for their claims, possession and inhabitation prior to 1803, orders of survey from Trudeau, and some of the provisional acts of Congress. Over five hundred such claims were confirmed.

A second part[59] of Recorder Bates's report dealt with

[56] *Annals of Congress*, 1st Session, 12th Congress, Appendix, pp. 2316–2319.
[57] *American State Papers, Public Lands*, Vol. III, pp. 314–326.
[58] *United States Statutes at Large*, Vol. II, pp. 748–752.
[59] *American State Papers. Public Lands*, Vol. III, pp. 327–331.

extensions made by virtue of section four of the act of March 3, 1813. That is, those persons who had claimed title to more than 640 acres but who had been granted less than that by the late Board of Commissioners were with few exceptions granted the 640 acres. To illustrate: Peter Rock had claimed 1056 arpents before the Board but had been granted only 450 arpents (certificate number 949). Recorder Bates extended the grant to 640 acres.

The third part[60] of Bates's report confirmed claims according to the provisions of the act of April 12, 1814. (See below p. 28). About four hundred titles were confirmed, among the owners of which we find such names as Auguste Chouteau, Antoine Soulard, and Nathan Boone, the son of Daniel Boone.

A fourth section[61] of the Recorder's report gives the confirmations made under Congressional acts from June 13, 1812 to April 12, 1814. Nearly five hundred claims in this group were confirmed. In the great majority of cases the area claimed was larger than that granted — the latter usually being 640 acres.

Another group of claims, constituting perhaps 450 in number, were rejected by the recorder. Still another group of claims numbering 312 was that of William Russell. Of these but twenty-three were confirmed by the Recorder.[62]

Relaxation in favor of land claimants of every description, which had been a uniform policy since 1804, continued until the year 1816. "This relaxation", wrote Secretary of the Treasury Crawford, "has generally been effected by comprehending descriptions of cases not recognized by previous acts; by extending the time within which notices of claims, and production of evidence were required, and by

[60] *American State Papers, Public Lands,* Vol. III, pp. 332–344.

[61] *American State Papers, Public Lands,* Vol. III, pp. 344–357.

[62] *American State Papers, Public Lands,* Vol. III, pp. 358–365.

giving authority, not only to decide upon such claims, but to revise and confirm such as had been previously rejected."[63]

By various acts the time for filing claims not then filed or adjusted and evidence thereon was extended to December 1, 1813; then to January 1, 1814; the powers and duties of the former Board of Commissioners were transferred to the Recorder of Land Titles, who was to report the results of his examination to the Commissioner of the General Land Office. Beneficiaries of former acts who had claimed 640 acres or more, but who had been granted less were allowed an entire section by the act of March 3, 1813.[64]

Congress, impatient and hopeful, perhaps, of making a final settlement of these persistent claims passed a law in April, 1814, entitled "An Act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri."[65] This confirmed titles in Missouri Territory in the following classes:

(1) Grants made by a French or Spanish concession, warrant, or order of survey prior to December 20, 1803, provided the claimant was a resident of Louisiana at the time of the concession.

(2) Grants made under the above conditions in the Territory of Missouri prior to March 10, 1804.[66]

(3) Grants which had formerly been denied because they were not inhabited prior to December 20, 1803.

Congressional confirmation of the action of Recorder

[63] From a letter to Henry Clay, Speaker of the House of Representatives, dated December 7, 1818, and printed in the *American State Papers, Public Lands,* Vol. III, pp. 392, 393.

[64] *United States Statutes at Large,* Vol. II, pp. 812–815.

[65] *United States Statutes at Large,* Vol. III, pp. 121, 123; *Annals of Congress,* First and Second Sessions, 13th Congress, Appendix, pp. 2823–2825.

[66] This is the date on which Captain Amos Stoddard took formal possession of the province of Upper Louisiana at St. Louis.— Stoddard's *Sketches of Louisiana,* p. 102.

Bates was made in the act approved April 29, 1816.[67] This law may be considered as closing the history of the efforts to settle by Congressional legislation the confusion of the grants dating back to the period of Spanish domination.

ADJUSTMENT OF SPANISH LAND CLAIMS IN MISSOURI 1816–1874

Seemingly dormant the Spanish claims remaining unsettled were not in a state of feeble inactivity in the years from 1816 to 1824. Memorials and petitions relative to land claims came to Congress from the Territory of Missouri as well as from the State of Louisiana; the heirs of grantees had become numerous, often wealthy and influential, and persistent; and talented and highly paid attorneys pressed their claims: these factors caused the question to be reopened in Congress.

Fifteen sections are included in the rather complicated act of Congress which was approved May 26, 1824, and entitled "An Act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."[68] Suits could be instituted in the United States District Courts for these jurisdictions, in the case of claims arising from concessions, grants, warrants, or orders of survey which had been legally made by Spain prior to March 10, 1804.

Any evidence formerly collected by the Board of Commissioners could be used for or against the United States when the author of the testimony was dead or beyond the reach of the court's process. Any claim to lands which was not brought before the court within two years was to be forever barred from prosecution. In every case where the decision was against the United States and in excess of 1000 acres the Attorney-General was privileged to appeal

[67] *United States Statutes at Large,* Vol. III, pp. 328, 329.

[68] *United States Statutes at Large,* Vol. IV, pp. 52–56.

to the Supreme Court. Likewise the claimant could perfect his appeal within one year. In the event of a favorable decision the claimant could demand a decree, which, when presented to the land office, would entitle him to a tract equal in area to that named in the court's decree.

Two years later (May 24, 1828) the time for the filing of petitions to test the validity of claims was extended two years. Likewise there was repealed the clause which required the payment of the costs of the suit when the decision was adverse to the claimant. Both these provisions indicate a generous policy on the part of the general government.[69]

An urgent memorial from the legislature of Missouri was sent to the Senate in February, 1831, in which the recreation of a board of land commissioners was recommended.[70] Twenty-eight years had passed since the Louisiana treaty and "yet to this hour claims to an immense amount remain undecided." Claimants with just rights should have their claims adjudicated and pretenses to titles should be silenced so that lands could be brought into the market for public sale.

"The unconfirmed claims in this State which are reserved from sale", continued the memorial, "amount to millions of acres; they lie scattered over the State in unequal proportions, some counties having none in them, whilst others are greatly overspread by them; they generally lie in large bodies, and frequently embrace the best land in the county. The evil which they cause to our citizens and to the State, by preventing continuous settlements, and the erection of mills, &c., upon their streams, and by withholding land from cultivation, by interruptions in the roads, by not being subject to taxation, and in a variety of other ways, is too manifest to need recapitulation."

[69] *United States Statutes at Large*, Vol. IV, p. 298.

[70] Printed in *American State Papers, Public Lands*, Vol. VI, p. 300.

Another law, approved on July 9, 1832, was "An Act for the final adjustment of private land claims in Missouri".[71] This provided for another commission to consist of the Recorder of Land Titles in Missouri and two commissioners to be appointed by the president. The commission was to examine and then to report upon two claims: first, those which in the opinion of that body should be granted, and second, those which should be regarded as destitute of merit. The examination was to be completed in two years and the report thereof submitted to Congress for final determination by that body.

President Jackson appointed as Commissioners A. G. Harrison and Lewis F. Linn who with Recorder F. H. Martin constituted the first Board. Later the Board was made up of James H. Relfe, F. R. Conway, and F. H. Martin. These bodies were to examine and classify all the unconfirmed claims in the office of the Recorder at St. Louis.

The report of the first Board bore date of November 27, 1833, and confirmed one hundred and forty-two claims.[72] The Board eulogized the policies of the French and Spanish governments, mentioned the hardships and dangers the settlers had overcome, and urged a liberal policy on the part of Congress. "In recommending the claims of these people, now presented to your notice, we do it on the grounds of their merit, the various laws, usages, customs, and practice of the different Governments under which they originated, and, in our opinion, the great and immutable principles of justice."

Ninety claims numbering from 256 to 345 were included in the first report[73] of the second Board and recommended for confirmation. The minutes as presented in the official

[71] *United States Statutes at Large,* Vol. IV, pp. 565-567.

[72] *Executive Documents,* 1st Session, 23rd Congress, Vol. II, Doc. No. 79.

[73] *American State Papers, Public Lands,* Vol. VIII, pp. 20–112.

documents show that there were long and protracted sittings at which petitions, concessions, and surveys were examined. The evidence submitted at the sessions of other Boards of Commissioners at Ste. Genevieve, St. Louis and elsewhere was reintroduced in many cases.

Among the large claims conferred was that of Israel Dodge for 7056 arpents which was confirmed on June 13, 1835. Another of 2000 arpents claimed by John P. Cabanne was confirmed two days later. In all cases the Board prepared a table showing the name of the original claimant, the size of the claim, its nature and date, the name of the grantor, and the facts concerning the survey.

The second class of claims, numbered from 1 to 152, were disallowed by the Board.[74] The claims of Jacques Clamorgan, a land speculator, explorer, fur trader, and merchant, aggregated over 1,000,000 arpents along the Mississippi River and were based upon exploring expeditions made and upon other public services. The Board after long and exhaustive investigation decided against these claims. Congressional confirmation of the action of the Board was completed on July 4, 1836.[75]

Meanwhile the heirs of former claimants had instituted proceedings in the courts to try the validity of their claims according to the act of May 26, 1824. These cases represent a large amount of litigation extending over many years and form the last chapter in the history of the Spanish land grants.

One of the earliest cases of this class to come before the Missouri court and the first to reach the Supreme Court of the United States was that of Antoine Soulard's Heirs *vs.* The United States.[76] The facts of this case as presented to

[74] *American State Papers, Public Lands,* Vol. VIII, pp. 113–243.

[75] *United States Statutes at Large,* Vol. V, pp. 126, 127.

[76] 4 Peters 511; the title of this case was Julie Soulard, Widow, and others, Appellants *vs.* The United States.

the Missouri court in November, 1824 are as follows: Antoine Soulard on April 26, 1796, was granted 10,000 arpents of land by Lieutenant-Governor Don Zenon Trudeau. This tract was to be located on any vacant lot of the royal domain. On the 20th of February, 1804, the grant was located and surveyed on the Cuivre River; on March 8, 1804, the survey was duly certified and recorded in the Surveyor-General's office. On March 2, 1805, the commission and certificate of survey were accidentally destroyed by fire. The petitioners, omitting to file their claims, were deprived of the benefits of the provisional laws of Congress. Of the said tract 1947.35 acres had been sold and the balance was not claimed by any other than the petitioner. Suit was therefore brought in the United States Court for Missouri to adjudicate the claim.

This court decided against the plaintiff, holding that the regulations of O'Reilly, Morales, and Gayoso showed the general intention and policy of Spain. Furthermore the ordinances excluded every reasonable supposition of the existence of any law, custom or usage, under which the alleged concession might have been perfected into a complete title, if Louisiana had not been transferred to the United States. These regulations, declared the court, could not be reconciled with the legality of the concession.

Brilliant legal talent appeared as counsel when the case came up for hearing in the Supreme Court. Thomas H. Benton was retained for the claimants and Attorney-General William Wirt appeared for the United States. Chief Justice Marshall's decision announced simply that the case would be taken under advisement. After deliberate attention and study, declared the court, it felt unable to render a decision, and the court felt the necessity of collecting and studying at greater length the land laws and ordinances of Spain.

Five years later (January term, 1835) the case was given a second hearing in which the testimony and the argument was long and exhaustive. The decision of the lower court was reversed and in delivering the opinion of the court Mr. Justice Henry Baldwin declared: "We are therefore of opinion, that the claim of the petitioners to the land described in the petition is a good and valid title thereto by the law of nations, the laws, usages and customs of Spain. . . . and that it ought to be confirmed to the petitioners agreeably to the prayer of their petition."[77]

Another case which had a similar course was that of John Smith T. *vs.* The United States.[78] This also had been decided in the Missouri court, appealed to the Supreme Court in 1830, taken under advisement, and decided in 1836. Both courts held this claim invalid because the tract had been located by private rather than by public survey. "Spain never permitted individuals to locate their grants by mere private survey" declared the Court. And it was held that Congress did not contemplate the submission of claims to the court unless the several steps in the transfer were in accordance with the laws and usages of Spain.

Prior to the handing down of these decisions by the Supreme Court two other claims were adjudicated. In the case of Charles Dehault Delassus *vs.* The United States the following facts appeared:[79] By a special order from the Governor-General (De Carondelet) the Lieutenant-Governor of Upper Louisiana made a grant of 7056 arpents to Delassus on April 1, 1795. The survey was delayed and not made until December 14, 1799.

The objection was set up that the Governor-General (Baron de Carondelet) had exceeded his powers and that

[77] 10 Peters 100.

[78] 10 Peters 326.

[79] 9 Peters 117, (January, 1835.)

his grant was invalid. The court, however, in confirming the grant declared that since 1774 the power of granting lands had been revested in the civil and military officers of the provinces who retained it until 1798. These officers became possessed of all the powers held by Governor O'Reilly, the grant was considered within the authority of the Governor-General, and the decree of the lower court was affirmed.

At the same term the Court confirmed a grant of 1281 arpents in the case of Chouteau's Heirs *vs.* The United States.[80] In stating the distinction between these two cases Chief Justice Marshall said: "The concession to Delassus was made by the lieutenant governor of upper Louisiana by direction of the governor-general, at a time when the power of granting land was vested in the governors of provinces. This power was transferred to the intendant-general in 1799, after which transfer in 1800, the order of survey under which Chouteau claimed, was made by the lieutenant governor. The validity of the order depends upon the authority of the lieutenant-governor to make it. Chouteau alleges in support of this authority, that the lieutenant-governor was also sub-delegate, in which character he was empowered to grant incomplete titles."

Still another case[81] dealt with the validity of the regulations of O'Reilly in Upper Louisiana. In confirming a grant of 7056 arpents to Auguste Chouteau's heirs it was held that the ninth regulation of O'Reilly requiring the ownership of "one hundred head of tame cattle, some horses and sheep, and two slaves to look after them" was not applicable to Upper Louisiana. The court also believed that O'Reilly's regulations did not inhibit the confirmation of tracts exceeding a league square. "The words of the

[80] 9 Peters 137, (January, 1835).

[81] Chouteau's Heirs *vs.* The United States; 9 Peters 147, (January, 1835).

regulation do not forbid different grants to the same person; and so far as the court are informed, have never been so construed."

Meanwhile claimants of French and Spanish grants had passed away, but their heirs were persistent in urging these claims — claims which had originated during the foreign domination of Louisiana or from the mass of Congressional legislation. Henceforth legislation by Congress upon these claims is somewhat spasmodic but generally is intended to make a final adjustment of a vexed problem dating back over fifty years.

When the law entitled "An Act for the final Adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other Purposes" was approved on June 22, 1860,[82] its twelve sections sounded a note of finality — a note, however, which was to be resounded within the next decade.

Another commission was constituted by this law from the recorder of land titles in the city of St. Louis and the Registers and Receivers of the land offices for Louisiana and Florida. This commission was to transmit to the Commissioner of the General Land Office a detailed report of its operations.

The law conferred upon them power to receive only such claims as were based upon *written* grants, and consequently prohibited consideration upon any interest founded merely on ancient settlement, when the same was not accompanied by a paper title from the former government.

Claims were to be presented within five years. The commission was directed to report three classes of claims: first, those emanating from France or Spain which were cultivated for twenty years prior to the filing of the claim, second, those emanating from France or Spain but not oc-

[82] *United States Statutes at Large*, Vol. XII, pp. 85–88.

cupied and cultivated, thirdly, those which in the opinion of the commissioners ought to be rejected because founded on fraud, uncertainty of proof, vagueness of description, etc. The first two groups were to be reported to Congress for action, but in the third class the Commissioner of the General Land Office was to give the final word in the case of claims not confirmed by the commissioners.

This law after being extended for three years by the act of Congress of March 2, 1867, was revised, amended, and extended for three years longer by the act of June 10, 1872. These acts warranted the Commissioners in receiving and acting not only upon the claims which originated under the former governments while the authorities exercised the granting power *de jure* (before the cession) but also allowed claims to be received which were made by the Spanish authorities while they were in actual occupancy of territory as the government *de facto*.

Private claims in the city of St. Louis had been finally adjusted in the Congressional act of June 12, 1866,[83] and as late as February 14, 1874, Congress confirmed a grant of 7153.32 arpents in favor of the heirs of Moses Austin. Two years later the legal representatives of James Clamorgan, J. Babtiste, and of others, were urging claims of thousands of acres before Congress. "The claims, aggregating many thousands, which have been reported by the various boards of commissioners, and confirmed by Congress from time to time, might be properly termed cases in the General Land Office for action, although in numerous instances the papers constituting the bases of patents are not on file there."[84]

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[83] *Congressional Globe*, 1st Session, 39th Congress, Appendix, pp. 327, 328.

[84] Donaldson's *The Public Domain*, p. 376.